IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No 108 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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GOKULANAND POLYTECH PVT. LTD.

Versus

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Appearance:

1. COMPANY PETITION No. 108 of 2003

MR PAVAN S GODIAWALA for Petitioner No. 1

..... for Respondent No. 1

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CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 05/09/2003

CAV JUDGEMENT

1. Heard ld. counsel Mr. Pavan S.Godiawala for the petitioner company and ld. Central Govt. Standing Counsel Ms. Davawala. I have considered the contents of

the petitions and totality reflected from the annexures annexed with the petition.

2. The present Company Petition is filed along with the Company Petitions filed by Barvala Textiles Private Limited being Company Petition No.107/2003 connected with Company Application No.133/2003 and Gokulanand Texturisers Pvt. Ltd. being Company Petition No.109/2003 connected with Company Application No.135 of 2003, for sanctioning the Scheme of Arrangement in the nature of De-merger of the Manufacturing, Trading and Investment Division activities of the petitioner company (De-merged company) and of Barvala Textiles Private Limited (De-merged company) with Gokulanand Texturisers Pvt. Ltd. (Transferee Company) on the terms and conditions as stated in the Scheme of Arrangement.

3. Earlier, by order dated 17.3.2003 in Company Application NO.134/2003 of the petitioner company, this Court (Coram: A.R.Dave,J) has after considering all the consent letters of the member shareholders and of the creditors of the petitioner company, was pleased to dispense with the meetings of the member shareholders and of the creditors of the petitioner company.

4. By Order dated 28th March 2003, the present petition was admitted and notice was issued to the Central Government through Regional Director, Department of Company Affairs. The notice was also ordered to be published in two newspapers. Pursuant to the same an affidavit of one Nimmi S.Jadeja dated 21.4.2003 has been filed confirming the publication of the notice in two newspapers as directed and service of notices to the Regional Director.

5. In response to the service of notice, Ms. P.J.Davawala, ld. Central Govt. Standing Counsel appeared in the matter and on 19.8.2003, she produced letter dated 11.7.2003 from the Regional Director along with the letter dated 15.7.2003 which were taken on record. In the said letter dated 11.7.2003, it is stated by the Regional Director that "On the basis of the Report furnished by your office, the following facts may be brought to the notice of the Hon'ble Court:-

(a) That Clause (7) of the Scheme provided for continuing of all legal proceedings by or against the de-merged companies pertaining to the manufacturing, trading and investment division activities which will vest in with the transferee company under the scheme relating to income tax and other tax proceedings. As major assets are proposed to be transferred as per the Scheme to the transferee company,

it is only just and proper that the transferee company is made liable for the income tax and other tax proceedings. As such the petitioner companies be directed to amend the scheme accordingly.

(b) That Clause 10 refers to allotment of shares in the ratio referred to therein, to the shareholders of de-merged companies. Accordingly, in such event, the de-merged company would cease to have any shareholders in order to maintain the minimum paid up capital requirement. Clause 10 of the Scheme provides that some members of the transferor companies shall retain their holding in their respective companies aggregating to Rs.1 Lakh or more against the assets of the same value as may be decided by the respective Board of Directors. Such clause is contradictory and vague inasmuch as the names of the members who would retain the shareholdings as above have not been disclosed in the Scheme. It is, therefore, just and proper that the petitioner companies are directed to suitably amend the Scheme so as to furnish the details of the shareholders who would retain the shares in the de-merged companies.

(c) Clause 10(iv) provides that the transferee company would endeavour to list its equity shareholders on the Stock Exchange. As the companies are Private Limited Companies, the aforesaid clause is not relevant and hence liable to be deleted."

6. Upon the aforesaid clarification sought by the Regional Director in his letter dated 11.7.2003, the ld. counsel Mr. Godiawala also tendered affidavit on 19.8.2003 clarifying the issues raised in the said letter which was also taken on record. The petitioner has sufficiently explained and clarified through its affidavit that there are no liabilities for the income-tax and other tax proceedings against the petitioner company and further both the De-merged companies are going to retain their immovable properties in their name except the assets pertaining to their manufacturing, investment and trading divisions, which are going to be hived off and thus there shall not be any loss to the revenue and therefore there is no need to

amend the Scheme. The petitioner has further given the clarification that Clause :10 of the Scheme itself provides that "some members of the BTPL and GPPL shall retain their holding in their respective companies aggregating to Rs.1,00,000/ or more in each of the said De-merging companies against the assets of the same value as decided by the respective Board of Directors." Hence, the said clause is neither contradictory nor vague as the said De-merging companies are not going to cease after the Scheme is sanctioned. It is further clarified that as per the requirement of the provisions of the law the De-merging companies are going to retain the paid up share capital of at least Rs.1 Lakh and this is in fact a part of the Scheme itself, for further clarification purpose only, the petitioner has given list of members and the shares to be sold by them in the respective De-merged companies after the sanctioning of the Scheme and thus upon the said clarification, it seems that there is no requirement to amend the Scheme as apprehended and proposed by the Regional Director.The petitioner has also clarified in respect of the third clarification sought by the Regional Director, that the said clause 10(iv) was incorporated by oversight and the same may be directed to be deleted, thus the said clause is required to be deleted.

7. In view of above, this Court is of the view that there are no grounds or circumstances to refuse to sanction the Scheme of Arrangement in the nature of De-merger with only amendment/ modification of deleting the clause 10(iv). Accordingly the present petition is allowed with the modification of deleting Clause 10(iv) and Scheme of Arrangement at Annex.C to this petition with modification as aforesaid is hereby approved and relief in terms of para 15(a) of this petition is hereby granted.

8. The fees of ld. Central Govt. Addl. Standing Counsel is quantified at Rs.3,500/ and the same be paid to ld. Central Govt. Addl. Standing Counsel Ms. P.J.Davawala, to be paid by the De-merged Company.

9. Company petition stands allowed accordingly.

[ C.K. BUCH, J ]

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